

REMARKS/ARGUMENTS

Claims 1-5, 13-16, and 19-33 are pending. Claims 1, 5, and 13 have been amended to highlight that these claims are patent eligible, and claims 21, 25 and 26 have been amended to use preferential language. The examiner's allowance of claims 21-26 and 28-32 is acknowledged with appreciation. The examiner's implicit acknowledgement of allowable subject matter in claims 1-5, 13, 15-17, 19, 20 and 33 by not detailing a prior art rejection is also acknowledged with appreciation.

Reconsideration is respectfully requested in light of the amendments and remarks contained herein.

Claim Rejections – 35 U.S.C. § 101

Claims 1-5, 13, 15-17, 19, 20 and 33 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In an effort to expedite prosecution, independent claims 1, 5 and 13 have been amended, and it is respectfully submitted that these claims are directed to statutory subject matter. Support for the amendments may be found, for example, in the present application at p. 1, line 15 – p. 2, line 21, p. 3, line 20 – p. 4, line 3, at p. 9, lines 3-15, at the multitude of display screen shots at Figs. 1-5, 7-79, 81, 89-90, 92, 94, 99, 103-104, as well as in the originally filed claims.

In particular, claims 1 and 5 as amended require, among other things generating with a computer a test item variant using a simultaneous constraint solver executed by the computer, wherein the simultaneous constraint solver resolves the plurality of constraints pertaining to the variables, displaying the test item variant on a display screen for review by a user, and accepting the test item variant for use as a test item for an examination. Similarly, claims 13 as amended requires, among other things, simultaneously solving test item model constraints with a simultaneous constraint solver executed by a computer to generate values for variables of the selected test item model and generating test item solutions with the computer based on the selected test item model, displaying the test item solutions on a display screen for review by a user, and accepting a displayed test item solution for use as a test item for an examination.

As such claims 1, 5 and 13 are plainly patent eligible. In particular, the claims are tied to a particular machine – a computer – that generates test item variants

wherein the computer executes a simultaneous constraint solver. This is clearly not mere mental activity; rather, it is activity that is expressly executed with the computer. As such, the claims are tied to a particular machine and are patent eligible for at least this reason.

Further, the claims require displaying a test item variant (claims 1 and 5) or test item solutions (claim 13) on a display screen for review by a user and accepting the test item variant (claims 1 and 5) or a test item solution (claim 13) for use as a test item for an examination, and this is not mere “insignificant extra-solution activity.” To the contrary, the displaying step is integral to the claims because that step permits review by a user so that the computer can accept from the user an item for use as a test item for an examination. Thus, the claims do not run afoul of merely claiming insignificant extra-solution activity. Moreover, the displaying step further reinforces the fact that the claims are tied to a particular machine, the machine also involving a display screen. Thus, the claims are patent eligible for these additional reasons.

Moreover, the claims involve transforming information associated with the test item variant (claims 1 and 5) or test item solution (claim 13) into a cognizable item that can be viewed on a display screen and understood by a user, so that the computer can then accept such item as a test item for an examination. As such the claims reflect the transformation of particular objects (in this case, data) into another thing. Moreover, that transformation is significant since it permits the resulting practical application of accepting by the user an item for use as a test item for an examination. The claims are patent eligible for these additional reasons.

Further, the claims impose a meaningful limit on the claim scope because the use of the computer as claimed does not preempt all use of computerized simultaneous constraint solvers but rather is limited to such use in connection with computerized test item generation for examinations. Moreover, the claims are further limited to a particular type of test item generation – namely, that where a test item variant (or test item solution) is itself generated from another test item, and where that test item variant (or test item solution) is then displayed on a screen so as to be accepted as a test item for an examination. Thus, the claims are sufficiently limited in claim scope and are patent eligible for at least these additional reasons.

Accordingly, for all these reasons, claims 1, 3 and 15 are patent eligible, and withdrawal of the Section 101 rejection is respectfully requested.

Conclusion

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

The Commissioner is authorized to charge any fees that may be required by this paper to Jones Day Deposit Account No. 50-3013.

Respectfully submitted,

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